

Message Text

PAGE 01 STATE 049420 TOSEC 060031

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S/S - MR. ORTIZ

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FM SECSTATE WASHDC

TO USDEL SECRETARY FLASH

S E C R E T STATE 049420 TOSEC 060031

NODIS

FOR THE SECRETARY FROM LEIGH

E.O. 11652: N/A

TAGS: PINT, JA, US

SUBJECT: BRIEFING MEMORANDUM: FOREIGN GOVERNMENT REQUEST

--- FOR EVIDENCE OF LOCKHEED PAYMENTS

--- FOR THE SECRETARY FROM LEIGH

1. EAGLEBURGER HAS RELAYED YOUR DECISION THAT WE DEFER FINAL ACTION ON THREE JAPANESE REQUESTS FOR EVIDENCE RELATING TO LOCKHEED PAYOFFS IN JAPAN. THE LATEST REQUEST IS IN FORM OF A LETTER FROM PRIME MINISTER MIKI TO PRESIDENT FORD WHICH WAS DELIVERED BY TOGO TO INGERSOLL ON FEBRUARY 24. AT THAT MEETING I POINTED OUT TO TOGO THAT OUR JUSTICE DEPARTMENT WOULD BE PREPARED TO DISCUSS COOPERATION WITH THE JAPANESE MINISTRY OF JUSTICE IN ACCORDANCE WITH CUSTOM-ARY STANDARDS OF CONFIDENTIALITY.

2. TOGO SENT EMBASSY REPRESENTATIVES TO A MEETING AT JUSTICE THE NEXT DAY, FEBRUARY 25, AT WHICH OUR JUSTICE DEPARTMENT REPRESENTATIVES QUERIED JAPANESE EMBASSY MINISTRY OF JUSTICE OFFICER EXTENSIVELY ON STANDARDS OF SECRET

PAGE 02 STATE 049420 TOSEC 060031

CONFIDENTIALITY CUSTOMARILY MAINTAINED IN JAPANESE MINISTRY OF JUSTICE DURING CRIMINAL INVESTIGATION.

3. ON FRIDAY, FEBRUARY 27, A SECOND MEETING WAS HELD AT

THE JUSTICE DEPARTMENT WITH THE JAPANESE, INCLUDING A MORE SENIOR REPRESENTATIVE OF THE JAPANESE MINISTRY OF JUSTICE, WHICH CONFIRMED THAT THE MINISTRY OF JUSTICE WAS PREPARED TO RESPECT WHATEVER CONDITIONS AS TO CONFIDENTIALITY OUR DEPARTMENT OF JUSTICE FELT IT NECESSARY TO IMPOSE. AT THIS MEETING ROD HILLS, CHAIRMAN OF THE SEC, WAS IN ATTENDANCE AND ACTIVELY PARTICIPATED.

4. AT THE FEBRUARY 27 MEETING WE HANDED THE JAPANESE A WORKING PAPER ENTITLED "PROCEDURES FOR MUTUAL ASSISTANCE IN THE ADMINISTRATION OF JUSTICE," WITH THE EXPLANATION THAT THIS WAS WHOLLY AD REFERENDUM AND WAS INTENDED MERELY TO GIVE THEM AN IDEA OF HOW COOPERATION IN THE LAW ENFORCEMENT FIELD COULD PROCEED AND UNDER WHAT TERMS. THE JAPANESE ASKED NUMEROUS QUESTIONS ABOUT THIS PAPER AND HAVE COMMUNICATED A SLIGHTLY REVISED VERSION (TEXT IN PARAGRAPH 10 BELOW) TO TOKYO FOR INSTRUCTIONS. WE HAVE MADE IT CLEAR THAT U.S. FULLY RESERVES ITS POSITION. IF "PROCEDURES" ARE ULTIMATELY AGREED WE EXPECT THEY WOULD BE INITIALLED BY REPRESENTATIVES OF OUR DEPARTMENT OF JUSTICE AND JAPANESE MINISTRY OF JUSTICE. HOWEVER, NOTE THAT IN PARAGRAPH NUMBERED ONE OF "PROCEDURES" NORMAL CHANNEL OF COMMUNICATION IS THE DIPLOMATIC CHANNEL UNLESS OTHERWISE AGREED. WE ANTICIPATE THAT JAPANESE MAY PREFER THAT ACTUAL DELIVERY OF EVIDENCE BE FROM DEPARTMENT OF JUSTICE TO JAPANESE MINISTRY OF JUSTICE.

5. WE HAVE TENTATIVE DATE TO MEET WITH JAPANESE REPRESENTATIVES AGAIN AT THREE O'CLOCK THIS AFTERNOON TO HEAR THEIR REACTION. OUR POSITION WILL CONTINUE TO BE FULLY RESERVED.

6. AS BETWEEN REFUSING ALL COOPERATION AND TOTAL PUBLIC DISCLOSURE OF INFORMATION, I THINK PROPOSED PROCEDURES PROVIDE A REASONABLE INTERMEDIATE POSITION WHICH WILL FACILITATE ORDERLY ADMINISTRATION OF JUSTICE WITHOUT PREMATURE DISCLOSURE OF INFORMATION ON INDIVIDUAL NAMES
SECRET

PAGE 03 STATE 049420 TOSEC 060031

WHICH MIGHT PREJUDICE ONGOING U.S. INVESTIGATIONS AT SEC AND IN THE DEPARTMENT OF JUSTICE AND WHICH COULD BE HIGHLY PREJUDICIAL TO REPUTATIONS OF INDIVIDUALS BOTH IN THE UNITED STATES AND IN JAPAN WHO MAY OR MAY NOT ULTIMATELY BE BROUGHT TO TRIAL.

7. AS YOU KNOW, WE HAVE SAME PROBLEM WITH PENDING REQUESTS FROM TURKEY AND ITALY AND IMPENDING REQUESTS FROM NETHERLANDS AND SPAIN. WE ARE WORKING ON THE ASSUMPTION THAT PATTERN ADOPTED FOR JAPAN WILL APPLY TO REQUESTS BY ALL OTHER FOREIGN GOVERNMENTS IN THE ABSENCE OF SPECIAL CIRCUMSTANCES. INDEED, URGENCY OF THE EUROPEAN GOVERNMENTAL REQUESTS IS ONLY SLIGHTLY LESS

PRESSING THAN FOR JAPAN. IT IS REASONABLE TO ASSUME THERE WILL BE SIMILAR REQUESTS FROM CERTAIN MIDDLE EASTERN COUNTRIES.

8. WE ARE HOPEFUL YOU WILL BE ABLE TO MEET ON THIS SUBJECT AS SOON AS POSSIBLE AFTER YOUR RETURN ON TUESDAY. BOB INGERSOLL IS SCHEDULED TO TESTIFY ON CORRUPT PRACTICES OF AMERICAN COMPANIES ABROAD BEFORE PROXIMITY SUBCOMMITTEE OF JOINT ECONOMIC COMMITTEE AT 9:30 ON WEDNESDAY MORNING. IT WOULD BE EXTREMELY HELPFUL TO HIM TO BE ABLE TO SAY AT THAT HEARING THAT WE ARE EXPLORING THE POSSIBILITY OF WORKING OUT PROCEDURES FOR COOPERATION BETWEEN AMERICAN LAW ENFORCEMENT AGENCIES AND FOREIGN MINISTRIES OF JUSTICE.

9. I HAVE TALKED TO SENATOR PERCY. ROD HILLS HAS TALKED TO SENATOR CHURCH. INsofar AS THE CHURCH SUBCOMMITTEE IS CONCERNED, IT IS PREPARED TO SUPPLY SUCH INFORMATION AS IS RESPONSIVE TO FOREIGN GOVERNMENT REQUESTS THROUGH THE EXECUTIVE BRANCH, EITHER THE STATE DEPARTMENT OR THE DEPARTMENT OF JUSTICE.

10.BEGIN TEXT: BEGIN UNDERSCORE. PROCEDURES FOR MUTUAL ASSISTANCE IN ADMINISTRATION OF JUSTICE IN CONNECTION WITH THE LOCKHEED CORPORATION. END UNDERSCORE.

SECRET

PAGE 04 STATE 049420 TOSEC 060031

THE UNITED STATES DEPARTMENT OF JUSTICE (QUOTE THE DEPARTMENT UNQUOTE) AND THE MINISTRY OF JUSTICE OF JAPAN (QUOTE THE MINISTRY UNQUOTE) - HEREAFTER ALSO REFERRED TO AS QUOTE THE PARTIES UNQUOTE - CONFIRM THE FOLLOWING UNDERSTANDING IN REGARD TO MUTUAL ASSISTANCE TO BE RENDERED TO AGENCIES WITH LAW ENFORCEMENT RESPONSIBILITY IN THEIR RESPECTIVE COUNTRIES IN CIVIL, PENAL AND ADMINISTRATIVE MATTERS RELATING TO ALLEGED ILLICIT SALES ACTIVITIES IN JAPAN OF THE LOCKHEED CORPORATION AND ITS SUBSIDIARIES OR AFFILIATES:

(1) ALL REQUESTS FOR ASSISTANCE BY JAPANESE AGENCIES WITH LAW ENFORCEMENT RESPONSIBILITIES SHALL, UNLESS OTHERWISE AGREED, BE TRANSMITTED THROUGH THE DIPLOMATIC CHANNEL TO THE OFFICE OF (BEGIN UNDERSCORE; END UNDERSCORE) IN THE UNITED STATES DEPARTMENT OF JUSTICE, AND ALL REQUESTS FOR ASSISTANCE BY UNITED STATES AGENCIES WITH LAW ENFORCEMENT RESPONSIBILITIES SHALL BE TRANSMITTED THROUGH THE DIPLOMATIC CHANNEL TO THE JAPANESE (BEGIN UNDERSCORE; END UNDERSCORE).

(2) THE PARTIES AGREE TO EXECUTE BY THE MOST EXPEDITIOUS MEANS LETTERS OF REQUESTS ISSUED BY THE JUDICIAL AUTHORITIES OF THEIR RESPECTIVE COUNTRIES IN CONNECTION WITH ANY CIVIL OR CRIMINAL PROCEEDINGS WHICH MAY ENSUE IN

THEIR RESPECTIVE COUNTRIES.

(3) UPON REQUEST, THE PARTIES AGREE TO PERMIT THE INTERVIEWING OF PERSONS IN THEIR RESPECTIVE COUNTRIES BY LAW ENFORCEMENT OFFICIALS OF THE OTHER PARTY, PROVIDED ADVANCE NOTICE IS GIVEN OF THE IDENTITY OF THE PERSONS TO BE INTERVIEWED AND OF THE PLACE OF THE INTERVIEW. REPRESENTATIVES OF THE OTHER PARTY MAY BE PRESENT AT SUCH INTERVIEWS. THE PARTIES WILL ASSIST EACH OTHER IN ARRANGING FOR SUCH INTERVIEWS AND WILL PERMIT THE TAKING OF TESTIMONY OR STATEMENTS OR THE PRODUCTION OF DOCUMENTS AND OTHER MATERIALS IN ACCORDANCE WITH THE PRACTICE OR PROCEDURE OF THE REQUESTING STATE. THE REQUESTING PARTY SHALL NOT PURSUE ITS REQUEST FOR AN INTERVIEW OR FOR THE PRODUCTION OF DOCUMENTS AND OTHER MATERIALS IF THE
SECRET

PAGE 05 STATE 049420 TOSEC 060031

REQUESTED PARTY CONSIDERS THAT IT WOULD INTERFERE WITH AN ONGOING INVESTIGATION OR PROCEEDING BEING CONDUCTED BY THE AUTHORITIES OF THE REQUESTED PARTY.

OCUMENTS, AND OTHER MATERIALS) MADE AVAILABLE BY THE DOCUMENTS, AND OTHER MATERIALS) MADE AVAILABLE BY THE PARTIES PURSUANT TO THIS UNDERSTANDING, AND ALL CORRESPONDENCE BETWEEN THE PARTIES RELATING TO SUCH INFORMATION AND TO THE IMPLEMENTATION OF THIS UNDERSTANDING SHALL BE KEPT CONFIDENTIAL DURING THE INVESTIGATIVE STAGES AND SHALL NOT BE DISCLOSED TO THIRD PARTIES OR TO GOVERNMENT AGENCIES HAVING NO LAW ENFORCEMENT RESPONSIBILITIES. DISCLOSURE TO OTHER AGENCIES HAVING LAW ENFORCEMENT RESPONSIBILITIES SHALL BE CONDITIONED ON THE RECIPIENT AGENCY'S ACCEPTANCE OF THE TERMS SET FORTH HEREIN. IN THE EVENT OF BREACH OF CONFIDENTIALITY, THE OTHER PARTY MAY DISCONTINUE COOPERATION UNDER THESE PROCEDURES.

- (5) INFORMATION MADE AVAILABLE PURSUANT TO THIS UNDERSTANDING MAY BE USED FREELY IN ANY ENSUING CRIMINAL, CIVIL OR ADMINISTRATIVE PROCEEDING IN THE REQUESTING STATE IN WHICH AN AGENCY OF THE REQUESTING STATE IS A PARTY, AND THE PARTIES SHALL USE THEIR BEST EFFORTS TO FURNISH THE INFORMATION FOR PURPOSES OF TRIAL OR OTHER LEGAL PROCEEDING IN SUCH FORM AS TO RENDER IT ADMISSABLE PURSUANT TO THE RULES OF EVIDENCE IN EXISTENCE IN THE REQUESTING STATE (INCLUDING, BUT NOT LIMITED TO CERTIFICATION, AUTHENTICATIONS, AND THE FURNISHING OF WITNESSES TO PROVIDE THE FOUNDATION FOR THE ADMISSIBILITY OF EVIDENCE).

- (6) THE PARTIES SHALL GIVE ADVANCE NOTICE, AND AFFORD AN OPPORTUNITY FOR CONSULTATION, PRIOR TO THE INSTITUTION OF LEGAL PROCEEDINGS IN WHICH INFORMATION MADE AVAILABLE PURSUANT TO THESE PROCEDURES IS INTENDED TO BE USED.

- (7) THE ASSISTANCE TO BE RENDERED TO A REQUESTING STATE SHALL NOT BE REQUIRED TO EXTEND TO SUCH ACTS BY THE AUTHORITIES OF THE REQUESTED STATE AS MIGHT RESULT IN THE IMMUNIZATION OF ANY PERSON FROM PROSECUTION IN THE REQUESTED STATE.

SECRET

PAGE 06 STATE 049420 TOSEC 060031

- (8) ALL ACTIONS TO BE TAKEN BY A REQUESTED STATE WILL BE PERFORMED SUBJECT TO ALL LIMITATIONS IMPOSED BY ITS DOMESTIC LAW.

- (9) NOTHING CONTAINED HEREIN SHALL LIMIT THE RIGHTS OF THE PARTIES TO UTILIZE FOR ANY PURPOSE INFORMATION INDEPENDENTLY OBTAINED.

- (10) THE MUTUAL ASSISTANCE TO BE RENDERED BY THE PARTIES IS DESIGNED SOLELY FOR THE BENEFIT OF THEIR RESPECTIVE AGENCIES HAVING LAW ENFORCEMENT RESPONSIBILITIES AND IS NOT INTENDED OR DESIGNED TO BENEFIT THIRD PARTIES, OR TO AFFECT THE ADMISSIBILITY OF EVIDENCE UNDER THE LAWS OF EITHER THE UNITED STATES OR JAPAN. END TEXT. INGERSOLL

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